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MARITAL RAPE: A CALL TO ADVOCACY

Index

- I. Introduction**
- II. History**
 - A. Origins and Theories**
 - B. The Beginnings of Change**
- III. State Laws**
 - A. Trends**
 - B. Felony Level**
 - C. Additional Legal Hurdles**
 - D. Unique Laws and Provisions**
- IV. What Advocates Can Do**
 - A. Why Your Engagement in This Topic is Important**
 - B. Prevalence, Statistics, and Studies**
 - C. Intake Procedures and Additional Services**
- V. Conclusion**
- VI. Appendix**
 - A. Criminal Laws on Marital Rape, by State**
 - B. Resources**

I. Introduction

Marital rape is a serious and often insidious form of violence against women¹ with potentially devastating long-term physical and emotional effects. However, it is also vastly underreported and thus often untreated.

The failure to identify, treat, and hold perpetrators accountable for marital rape stems from multiple factors, including the intensely intimate nature of the crime and the understandable reluctance of some survivors to disclose marital rape, the lack of adequate intake practices designed to elicit and address information about marital rape from women, and social attitudes and the related legal history of reluctance to acknowledge marital rape as a crime.

This paper will provide a brief history of legal and social attitudes toward marital rape, a summary of the current state of the law, commentary on the importance of identifying and assisting marital rape survivors, and practical information regarding intake and other procedures designed to more effectively get women talking about marital rape.

II. History

A. Origins and Theories

Recognition of marital rape as a crime is a recent development in the history of law. State laws on marital rape in the United States can be traced to England, where the first Chief Justice Sir Matthew Hale pronounced that a husband cannot be guilty of rape of his wife "for by their mutual matrimonial consent and contract the wife hath given herself in this kind unto the husband which she cannot retract."² This statement became known as the Lord Hale doctrine and represented a common-law marital rape exemption, under which husbands could not be accused of committing the crime of rape against their wives. His doctrine relied on a theory of irrevocable consent to justify the exemption; that is, the view that by entering into the contract of marriage, the parties consent once and forever to all future acts of sex. Almost two centuries later, this principle was embraced by the U.S. legal system, which formally recognized the exemption in the 1857 *Commonwealth v. Fogarty* decision.³

Hale's "implied consent" principle was the most widespread argument for the marital rape exception. However, there were two additional theories that served to justify the exemption: the "unities" theory and the theory of "separate spheres." The unities theory was derived from

the feudal doctrine of coverture, or unity of husband and wife. This doctrine held that the husband and wife became one upon marriage, but in reality the "one" was the husband. It served to legitimate the view that women were their husband's property, deprived of all civil identity. Rape was considered a crime against another man's property, rather than a violation of a woman's body. Therefore, common law dictated that it was impossible for husbands to steal (i.e. rape) their own property (i.e. wives).⁴

The separate spheres approach gradually replaced the unities theory as the legal justification for sexual inequality. Under this theory, men were said to inhabit the public realm (of politics and the economy) and women were said to inhabit the private realm (of the family). Spousal relations fell under the private sphere of family. Women were no longer naturally inferior, just naturally different. In this unregulated private sphere, men were free to oppress women, and more specifically, to rape their wives.⁵

B. The Beginnings of Change

Social and legal attitudes began to change with the help of three developments in the late 19th and early 20th centuries. One was the Married Women's Property Act of 1889, which afforded women the right to manage their own property, work outside the home without the consent of their husbands, and keep their own wages. Second, the divorce laws changed, making it possible for a wife to revoke her marriage contract (at which time, in theory, her implied matrimonial consent should have been revocable as well). Third, sexual assault legislation was evolving to include a broader array of sexual offenses. These three phenomena helped to shift the ideology surrounding the legality and rationale for marital rape exemptions and the "license to rape" given to husbands.⁶

Despite these, the prevalent assumption of aligned interests between husband and wife was so strong that its proponents did not even acknowledge that a marital rape exemption might cause wives harm. Culturally, there was and in many respects still is a tremendous need to understand marital relations as consensual and harmonious, and the modern defense of the marital rape exemption is one of the most obvious manifestations of that phenomenon.⁷ However, statistics on marital violence undermine the legitimacy of this ideal.

In reality, for some "marriage is a potentially antagonistic and dangerous relation, in which women need and deserve legal rights to protect themselves from the serious harms caused by unwanted sex...Protecting privacy protects husbands from criminal prosecution for acts committed against their wives."⁸ Husbands are benefactors of the

marital rape exemption and wives are effectively denied the protection of law from acts that would be considered serious crimes if they were inflicted by someone other than their husbands. The simple fact that a woman gets married should not leave her without the full protection that the law affords to unmarried women who are raped.⁹ As policy makers came to this realization, state laws gradually changed to address the crime of marital rape – with varying degrees of success.

III. State Laws

States did not begin to criminalize spousal rape until the late 1970s. Before that time, the spouse was typically exempted from the state sexual assault laws, for reasons rooted in the historical views set forth above. Women's rights advocates began efforts to change these laws, and by July 5, 1993, marital rape was a crime in all 50 states and the District of Columbia. The first state to abolish the marital rape exemption was Nebraska in 1976, and the last was North Carolina in 1993. However, despite official recognition of rape within marriage as a criminal offense, husbands who rape their wives have not been – and to a large extent are not today – held accountable by society or the law to the same degree as other violent offenders. Marital rape is rarely treated as seriously as other forms of rape in many states, and the continued existence of lingering forms of spousal exemptions in the majority of states indicates that rape in marriage is still regarded as a less severe crime than other forms of rape.¹⁰

A. Trends¹¹

States have employed different techniques to criminalize marital rape. Many states simply removed the marital rape exemption without adding any new language to their state codes. Several states replaced the former exclusionary language with text specifying that marriage to the victims is not a defense. Still others states created a separate offense of spousal rape.¹²

i. Exemption Removed, No Language Added

To eliminate the spousal rape exception, many states simply removed the exemption language, leaving no mention of marital status in their rape statutes. For example, Pennsylvania once had a separate offense of marital rape (which was classified as a lesser offense than stranger rape). That law was repealed to remove any language indicating relevance of a marital relationship between the victim and the offender, so that now in Pennsylvania, rape is rape.¹³ Another example of this is Maine, which completely

removed its exemption as well.¹⁴ Unfortunately, advocates report that, as a practical matter, many people in still do not recognize spousal rape as rape, despite legal language to that effect.

ii. Marriage Explicitly Excluded as a Defense

Several states have amended their laws to overtly specify that marriage is not a defense to rape. One of these states is North Carolina, whose law makes it clear that sexual offenses by spouses should be treated the same as sexual offenses by strangers: "A person may be prosecuted under this Article whether or not the victim is the person's legal spouse at the time of the commission of the alleged rape or sexual offense."¹⁵ The District of Columbia is another example: "No actor is immune from prosecution under any section of this subchapter because of marriage or cohabitation with the victims."¹⁶

Spousal Rape as a Separate Crime

Spousal rape is a separate crime in five states. For example, in South Carolina, spousal sexual battery is defined as "the use or the threat of use of a weapon or the use or threat of use of physical force or physical violence of a high and aggravated nature, by one spouse against the other spouse if they are living together..."¹⁷ California has a similar, separate statute (see *Unique Laws and Provisions, i.*, below – also note California's reporting requirement for marital rape, see *Additional Legal Hurdles, 2.*).

iii. By Statute, Marriage is a Mitigating Factor

In some states, marriage is a factor that diminishes the charge and penalties the perpetrator faces. For example, in South Carolina¹⁸ the perpetrator of marital rape where the parties are living together (rather than separated) can be punished with up to 10 years in prison (Class E felony); criminal conduct in the first degree (for non-spouses or for those who are separated/not living together) is punishable with up to 30 years in prison (Class A felony). The Code specifies that a "person cannot be guilty of criminal conduct under [the Code sections defining criminal sexual conduct] if the victim is the legal spouse unless the couple is living apart **and** the offending spouse's conduct constitutes criminal conduct in the first degree or second degree." (emphasis added)

B. Felony Level

The level of felony for marital rape differs from state-to-state. In Arizona, a first offense sexual assault of a spouse is a class 6 felony (the lowest level of felony in Arizona, mandating one year imprisonment); however the judge may reduce even this meager punishment by entering judgment

for conviction of a class 1 misdemeanor (which carries a fine of not more than \$2500) with mandatory counseling. In Connecticut, sexual assault in a spousal or cohabiting relationship is a Class B felony (which is a term not less than one year nor more than twenty).¹⁹ In Pennsylvania, marital rape is treated the same as non-marital rape, for which the penalty is a first degree felony (sentenced to a term of imprisonment, maximum of which is greater than 10 years); sexual assault is a second degree felony (sentenced to a term of imprisonment, not more than 10 years).²⁰

C. Additional Legal Hurdles

There are additional legal hurdles for marital rape victims in many state laws that are not present for non-marital rape victims. These obstacles include:

i. Force or Threat Required

One way some states treat rape of a spouse lies in the requirements regarding force or the threat of force used by the spouse. For example, in Tennessee, a person commits rape or sexual battery of a spouse only when the person is armed with a weapon or credible decoy, causes serious bodily injury to the victim, or when the spouses live apart and one of them has filed for a divorce or separation.²¹ In contrast, many non-marital sexual assault laws refer to the lack of consent, rather than the use of force.

ii. Reporting Requirement

In some states there is a specific and relatively short reporting period for marital rape. In South Carolina, the reporting requirement for spousal sexual battery or criminal sexual conduct is thirty days.²² Another state with specific reporting requirements for spousal rape is California, whose Penal Code states, "no prosecution shall be commenced under this section unless the violation was reported...within one year after the date of the violation."²³ By contrast, victims of rape by a non-spouse may face a limitations period of up to three or six year years, depending on the severity of the crime and the attendant sentencing requirements. For advocates, this constraint means that one must be aware of their state's requirement and make sure clients are similarly aware and do not inadvertently exceed strict time limits for reporting marital rape.

iii. Offenses Precluded for Spouses

In many states, there are some offenses that are unavailable to victims who are married to the offender. For example, in Ohio, the offense of "sexual battery" does not apply to a spouse, and the

offense of "rape" by the use of a drug or intoxicant that impairs the victim's ability to resist only applies to a spouse who is living apart from the victim.²⁴ In Washington, a spouse cannot be charged with third degree rape (an offense that includes sexual intercourse where the victim clearly expressed a lack of consent)²⁵, or indecent liberties.²⁶

iv. Statutes Requiring Divorce in Progress, Separate Living, or Court Order

In some states, a spouse cannot be charged with rape of a cohabiting spouse unless legal separation is imminent. The state statutes seem to indicate that if a couple is living together in a "good" (non-divorce) situation, the husband can rape his wife with impunity.

Under Maryland law: a spouse may only be prosecuted for rape in the 1st degree, 2nd degree or a sexual offense in the 3rd or 4th degree if force or threat of force is used, or if at the time of the alleged crime they lived apart (under a written separation agreement or for at least three months before the offense) or under the decree of limited divorce."²⁷ In Mississippi, the perpetrator is not guilty of sexual battery (sexual penetration without consent) "if the alleged victim is that person's legal spouse and at the time of the alleged offense such person and the alleged victim are not separated and living apart," except in certain circumstances involving forcible penetration.²⁸

D. Unique Laws and Provisions

i. Positive Developments

The breadth of California's spousal rape statute²⁹ is unique. Spousal rape includes "(3) where a person is at the time unconscious of the nature of the act, and this is known to the accused...because the victim meets one of the following conditions: (a) was unconscious or asleep." Also, "(4) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person."

Connecticut's separate statute³⁰ of sexual assault in a spousal relationship extends to cohabiting relationships as well. Also notably, "use of force" can include "use of superior physical strength against the victim", and "a threat of the use of force against such other spouse or cohabitor which reasonably causes such other spouse or cohabitor to *fear* physical injury." (emphasis added)

ii. Discouraging Provisions

In Virginia, punishment for marital rape may be severely weakened by a unique Code provision: "In any [marital rape] case deemed appropriate by the court, all or part of any sentence may be *suspended* upon the defendant's completion of counseling or therapy if not already provided...if the court finds such action will promote the maintenance of the family unit."³¹ Advocates should be attuned to this disturbing practice, and, where appropriate, be prepared to alert prosecutors to the potential dangers of the provision and the need to argue strenuously against it.

In Idaho³² there is a separate statute that explicitly specifies "no person shall be convicted of rape for any act or acts with that person's spouse, except under the circumstances cited in paragraphs 3 (force) and 4 (prevented from resistance by infliction or threatened infliction of bodily harm or is unable to resist due to the influence of a substance)" of the statute.

The limitations that still exist in the statutory treatment of marital rape are indicative of continued reluctance on the part of some to recognize marital rape as a heinous crime – one that is at least as violent and invasive as any other rape. However, these hurdles should not deter advocates from addressing marital rape with the women they serve. In fact, it makes advocacy on behalf of this population all the more important and necessary. There *are* legal consequences and remedies available for marital rape. Additionally, marital rape requires myriad responses apart from the legal arena – advocacy, medical assistance, counseling, and other services can provide key support to survivors of marital rape.

IV. What Advocates Can Do

A. Why Your Engagement in This Topic is Important

"Perhaps one of the reasons that marital rape is ignored is that its trauma is not readily apparent. The thinking seems to be that if you've had sex with someone hundreds of times before, what's one more time?"³³

Especially in the case of marital rape, it is the violation of self-determination and the breach of trust that are at the core of rape. Stranger rape is a devastating one-time occurrence; marital rape frequently involves a series of devastating occurrences, often spanning years. Marital rape is frequently violent and has *more* difficult traumatic effects on the victim.³⁴ Compared with women raped by strangers, marital rape survivors report even higher rates of anger and depression (understandable given that, in addition to the pain and degradation attendant to all forms of rape, marital rape entails the added offense of being violated by the very person who has pledged to honor and care for

the survivor, and to whom the survivor is legally, practically, and emotionally bound). There are many consequences, emotional and physical, that stem from marital rape: "physical effects include injuries to the vaginal and anal areas...gynecological effects include vaginal stretching and infertility...short-term psychological effects include PTSD and suicidal ideation [and] long-term psychological effects include disordered eating and depression..."³⁵

A study done by Raquel Kennedy Bergen indicated that 34% of service providers currently offer no specific outreach to wife rape survivors. This represents a real opportunity lost, as "[w]omen's organizations are in a valuable position to provide outreach specifically to the women themselves; in doing so, they can go far to help them recognize themselves as survivors of wife rape and end the violence."³⁶

It is important for advocates to identify marital rape and to be equipped to provide help and appropriate referrals to address a host of problems and effects stemming from the trauma. There is a real need for those who come into contact with marital rape survivors to comprehensively address this problem and provide the survivor with resources, information and support.

"In order to fully and adequately respond to the men who rape and the women who are sexually assaulted, we must focus our attention on forced sex in marriage, not as an additional form of physical battering, but as a significant violation in and of itself, whether accompanied by other violence or not."³⁷

B. Prevalence, Statistics, & Studies

Prevalence studies indicate that between 10% and 14% of all married women in the United States have been raped by their husbands.³⁸ Approximately 4.8 million intimate partner rapes and physical assaults are perpetrated against U.S. women annually.³⁹ The notion that marital or date rape occurs only infrequently and affects very few victims is strongly refuted by numerous studies. Nearly twice as many women have been raped by husbands or boyfriends as by strangers.⁴⁰

Frequently marital rape survivors are also battered. In a study done by Diana Russell⁴¹, more women were willing to disclose violence in other areas of the marriage than to disclose violence or force in sexual relations. It is obvious from her interview transcripts that honest disclosure of marital sexual abuse was more difficult than disclosure of any other form of abuse.

One study found that fifty-two percent of the victims of marital rape suffer severe long-term effects as compared to thirty-nine percent of the victims of stranger rape.⁴² These statistics reflect the fact that "when you are

raped by your husband you have to live with your rapist."⁴³ Findings from a National Violence Against Women Survey in their *Distribution of Rape and Physical Assault Victims* chart show that the average number of times women were victimized by the same partner was 4.5 times, and the average number of years they were victimized was 3.8 years.⁴⁴

Marital rape victims often suffer from a debilitating psychological dependency that binds them to their abusive perpetrators. Marital rape victims have been shown to experience a variety of psychological consequences that are a direct result of their unwanted sexual experience within marriage. These negative consequences include reduced self-esteem, increased risk for post-traumatic stress disorder, and more negative feelings about sex.⁴⁵ Victims of marital rape may be more likely to blame themselves and minimize the seriousness of their rape experience if they were not physically abused immediately prior to the rape.⁴⁶

Reporting of marital rape is low. Studies indicate that the closer the relationship between a victim and a perpetrator, the greater the likelihood that the police would not learn of the rape or sexual assault. When the offender was a current or former husband or boyfriend, about three-fourths of all victimizations were not reported to the police; 77% of completed rapes, 77% of attempted rapes, and 75% of sexual assaults were not reported. When the offender was a stranger, 54% of completed rapes, 44% of attempted rapes, and 34% of sexual assault were not reported to the police.⁴⁷ One report indicated that less than one-fifth of the women raped by an intimate partner said their most recent rape was reported to the police. Their most common reason for not reporting the rape was fear of the perpetrator.⁴⁸ These findings suggest that most victims of intimate partner violence do not view the justice system as an appropriate vehicle for resolving conflicts with intimates.

Findings by the National Violence Against Women Survey indicate that of the distribution of intimate partner rape victims, in 92.5% of the cases, the perpetrator wasn't prosecuted. In 84% of the cases, the victim did not obtain a temporary restraining order; in those 16% that did, 68% of those were violated.⁴⁹

C. Intake Procedures and Additional Services

In many instances, battered women are simply not asked about sexual assault within the marriage. "Women report that they have been asked to describe the most heinous physical abuse to shelter staff, yet they have never been asked about forced sex and they are too ashamed to bring up the matter themselves. When discussion of marital rape is not initiated by shelter staff, advocates, or group leaders, many battered women feel that

they are the only ones who experienced sexual violence in the context of a beating."⁵⁰

Not asking specific questions about marital rape is problematic especially for those who either don't identify their experiences as marital rape or are hesitant to verbalize their experiences because they are uncomfortable bringing up the issue. Many marital rape survivors don't define their experiences of forced sex in marriage as rape; they might believe only stranger rape is "real rape" or they might view sex in marriage as an obligation or duty.⁵¹ "In the minds of many women, this (not being asked specific questions) perpetuates the belief that marital rape is too shameful to talk about, even among workers who are familiar with family violence."⁵²

It is important to tailor intake for this group of survivors to their unique situation. Advocates themselves being open to the idea that marital rape exists and occurs frequently among battered women is a good start, as well as the use of effective language during the intake process. "Perhaps the best approach is to ask directly as part of the initial evaluation. [However], use of words like abuse or rape is rarely beneficial, since patients do not view themselves in that light. Questions need to be worded so as to give the message that the idea of forced sex is not unthinkable...and is indeed something to be looked at in the normal course of (intake)."⁵³ Asking sensitive questions about marital rape is critical because women are unlikely to volunteer this information on their own. "Furthermore, merely asking if one has "ever been raped?" is insufficient because so many marital rape survivors do not identify the sexual violence as rape. Instead, women should be questioned about their partners "forcing them to do things sexually they are uncomfortable with," "pressuring them to have intercourse," "forcing them to have sex against their will" and so forth."⁵⁴

The ideal program for survivors of marital rape would provide individual counseling as well as a support group specifically for marital rape survivors.⁵⁵ Within that individual counseling or support group, "as the woman feels [more free] to share her secrets, the focus needs to be shifted from the description of events to the impact of events. This is a difficult transition for many wives. It is often easier to describe an experience of forced sex with a husband or lover than it is to acknowledge that the event had any lasting emotional effect. But the women's perception of the impact of the abuse has more bearing on her ability to seek and utilize help than the actual events. Therefore, the meaning of the sexual abuse must be assessed by looking at the history of the relationship itself, the previous personal history and the social and cultural context. Recognition of the significance of forced sex comes about more

easily as its connection to other factors in the woman's life becomes more apparent."⁵⁶

It is critical that organizations and shelters also provide outreach to groups such as people with disabilities, those in rural areas, same-sex relationships, and non-English speaking communities, who may be unaware of available services.⁵⁷ Additionally, one seemingly obvious change could be the inclusion of marital rape in agency and shelter literature, brochures, and mission statements. Significantly, Bergen notes that currently fewer than 5% of agencies provide specific information on marital rape.⁵⁸

Finally, in addition to knowing how to solicit information about marital rape, advocates need to be prepared to respond accordingly to the client who does disclose. There is a strong likelihood that the advocate will be listening to tough information, and will need to rise to the challenge of listening to these personal stories and then providing the necessary support these unique survivors will need. This includes being prepared to listen to the details of the situation and to respond with appropriate safety planning measures, referrals, counseling services, medical assistance, or whatever else is fitting in a particular case. Also, "training specifically on marital rape is critical for staff members and volunteers; such programs should comprehensively address characteristics of marital rape and how to identify survivors, the state's laws on marital rape, and counseling techniques."⁵⁹

Advocates clearly can and should have an invested role in the services their organization or shelter provides to this unique group of survivors. The statistics and studies on marital rape reveal that engagement in the topic is important and necessary, especially in providing more comprehensive and complete services to clients.

V. Conclusion

Marital rape is a pervasive and severe form of violence against women with potentially devastating long-term physical and emotional effects. However, societal biases have long led to underreporting, lack of resources, and the crime of marital rape not being treated as seriously as other forms of rape in the police stations, courthouses, and treatment facilities of many states. Marital rapists have not been held accountable by society or the law to the same degree as other violent offenders.

Advocates' engagement in the topic of marital rape is vital for survivors. Advocates are in a critical position to provide outreach if they are willing and able to elicit the necessary information during intake, respond

appropriately, and thoroughly address the range of services needed.

Appendix A: Citations - State Laws on Marital Rape

- *Alabama*

Code of Ala. 13A-6-60 (2005)
Code of Ala. 13A-6-61 (2000)
Code of Ala. 13A-6-62 (2000)
Code of Ala. 13A-6-65 (1977)
Code of Ala. 13A-6-65.1 (1993)
Code of Ala. 13A-6-66 (1977)
Code of Ala. 13A-6-67 (2000)
Code of Ala. 13A-6-70 (1977)
Merton v State 500 So. 2d 1301;
1986 Ala. Crim. App. LEXIS 6924

- *Alaska*

Alaska Stat. 11.41.410 (2005)
Alaska Stat. 11.41.420 (2005)
Alaska Stat. 11.41.432 (2005)
Alaska Stat. 11.41.443 (2005)

- *Arizona*

A.R.S. 13-1404 (2004)
A.R.S. 13-1406.01 (2004)
A.R.S. 13-1407 (2004)
A.R.S. 13-1406

- *Arkansas*

A.C.A. 5-14-103 (2005)
A.C.A. 5-14-124 (2005)
A.C.A. 5-14-125 (2005)
A.C.A. 5-14-126 (2005)
A.C.A. 5-14-127 (2005)
Jones V State 438 Ark. 619; 74
S.W.3d 663; 2002 Ark. LEXIS 291

- *California*

Cal Pen Code 262 (2005)
Cal Pen Code 261 (2005)

- *Colorado*

C.R.S. 18-3-401 (2004)
C.R.S. 18-3-402 (2004)
C.R.S. 18-3-409 (2004)

- *Connecticut*

Conn. Gen. Stat. 53a-65 (2004)what
Conn. Gen. Stat. 53a-70b (2004)

- *Delaware*

11 Del. C. 771 (2005)
11 Del. C. 772 (2005)
11 Del. C. 773 (2005)

- *Florida*

Fla. Stat. 794.011 (2005)

- *Georgia*

Georgia Stat. 16-6-1

- *Hawaii*

HRS 707-730 (2004)
HRS 707-731 (2004)
HRS 707-732 (2004)
HRS 707-733 (2004)

- *Idaho*

Idaho Code 18-6101 (2004)
Idaho Code 18-6107 (2005)

- *Illinois*

720 ILCS 5/12-15 (2005)
720 ILCS 5/12-18 (2005)

- *Indiana*

Burns Ind. Code Ann. 35-42-4-1
(2004)

- *Iowa*

Iowa Code 709.1 (2004)
Iowa Code 709.4 (2004)

- *Kansas*

K.S.A. 21-3501 (2005)
K.S.A. 21-3502 (2005)

- *Kentucky*

KRS 510.040 (2004)
KRS 510.035 (2004)

- *Louisiana*

La. R.S. 14:41 (2005)
La. R.S. 14:43 (2005)
La. R.S. 14:43.1 (2005)

- *Maine*

17-A M.R.S. 251 (2005)
17-A M.R.S. 255-A (2005)

- *Maryland*

Md. Code Ann. 3-303 (2004)
Md. Code Ann. 3-304 (2004)
Md. Code Ann. 3-307 (2004)
Md. Code Ann. 3-308 (2004)
Md. Code Ann. 3-318 (2004)

- *Massachusetts*

ALM GL ch. 265 22 (2005)

- *Michigan*

MCLS 750.520b (2005)
MCLS 750.520c (2005)
MCLS 750.520d (2005)
MCLS 750.520e (2005)
MCLS 750.520g (2005)
MCLS 750.520i (2005)

- *Minnesota*

Minn. Stat. 609.342 (2004)
Minn. Stat. 609.349 (2004)

- *Mississippi*

Miss. Code Ann. 97-3-95 (2005)
Miss. Code Ann. 97-3-97 (2005)
Miss. Code Ann. 97-3-99 (2005)
Miss. Code Ann. 97-3-101 (2005)

- *Missouri*

566.010 R.S.Mo. (2005)
566.023 R.S.Mo (2005)
566.030 R.S.Mo. (2005)
566.040 R.S.Mo. (2005)

- *Montana*

MCA 45-5-501 (2004)
MCA 45-5-502 (2004)
MCA 45-5-503 (2004)

- *Nebraska*

R.R.S. Neb. 28-318 (2005)
R.R.S. Neb. 28-319 (2005)
R.R.S. Neb. 28-320 (2005)

- *Nevada*

NRS 200.364 (1995)
NRS 200.366 (2003)
NRS 200.373 (2004)

- *New Hampshire*

RSA 632-A:4 (2004)
RSA 632-A:5 (2004)

- *New Jersey*

N.J. Stat. 2C: 14-2 (2005)
N.J. Stat. 2C: 14-5 (2005)

- *New Mexico*

N.M. Stat. Ann. 30-9-10 (2005)
N.M. Stat. Ann. 30-9-11 (2005)
N.M. Stat. Ann. 30-9-12 (2005)

- *New York*

NY CLS Penal 130.00 (2005)
NY CLS Penal 130.35 (2005)
NY CLS Penal 130.50 (2005)
People v Liberta, 64 N.Y.2d 152;
474 N.E.2d 567; 1984 N.Y. LEXIS
4916

- *North Carolina*

N.C. Gen. Stat. 14-27.2 (2005)
N.C. Gen. Stat. 14-27.8 (2005)

- *North Dakota*

N.D. Cent. Code 12.1-20-02 (2005)
N.D. Cent. Code 12.1-20-04 (2005)
N.D. Cent. Code 12.1-20-07 (2005)

- *Ohio*

ORC Ann. 2907.02 (2005)

- *Oklahoma*

21 Okl. St. 1111 (2004)
21 Okl St. 1114 (2004)

- *Oregon*

Oregon Stat. 163.305 (1999)
Oregon Stat. 163.315 (2001)
Oregon Stat. 163.375 (1991)
Oregon Stat. 163.427 (1995)

- *Pennsylvania*

18 Pa.C.S. 3121 (2004)
18 Pa.C.S. 3124.1 (2004)

- *Rhode Island*

R.I. Gen. Laws 11-37-1 (2004)
R.I. Gen. Laws 11-37-2 (2004)
R.I. Gen. Laws 11-37-3 (2004)
R.I. Gen. Laws 11-37-4 (2004)
R.I. Gen. Laws 11-37-5 (2004)

- *South Carolina*

S.C. Code Ann. 16-3-615 (2004)
S.C. Code Ann. 16-3-658 (2004)

- *South Dakota*

S.D. Codified Laws 22-22-1 (2004)

- *Tennessee*

Tenn. Code Ann. 39-13-503 (2004)
Tenn. Code Ann. 39-13-507 (2004)

- *Texas*

Tex. Penal Code 21.01 (2004)
Tex. Penal Code 22.011 (2004)

- *Utah*

Utah Code Ann. 76.5.402 (2005)

- *Vermont*

13 V.S.A. 3251 (2004)
13 V.S.A. 3252 (2004)

- *Virginia*

Va. Code Ann. 18.2-61 (2004)
Va. Code Ann. 18.2067.2:1 (2004)

- *Washington*

Rev. Code Wash. 9A.44.040 (2005)
Rev. Code Wash. 9A.44.045 (2005)
Rev. Code Wash. 9A.44.050 (2005)
Rev. Code Wash. 9A.44.060 (2005)

- *Washington, D.C.*

D.C. Code 22-3002 (2005)
D.C. Code 22-3003 (2005)
D.C. Code 22-3004 (2005)
D.C. Code 22-3005 (2005)
D.C. Code 22-3019 (2005)

- *West Virginia*

W. Va. Code 61-8B-3 (2005)
W. Va. Code 61-8B-4 (2005)
W. Va. Code 61-8B-5 (2005)

- *Wisconsin*

Wis. Stat. 940.225 (2004)

- *Wyoming*

Wyo. Stat. 6-2-302 (2004)
Wyo. Stat. 6-2-303 (2004)
Wyo. Stat. 6-2-304 (2004)
Wyo. Stat. 6-2-307 (2004)

Appendix B: Resources

Organizations:

National Sexual Violence Resource Center
www.nsvrc.org

Wellesley's Marital Rape Project
www.wellesley.edu/wcw/projects/mrape.html

Pennsylvania Coalition Against Rape
www.pcar.org/about_sa/marital.html

National Clearinghouse on Marital and Date Rape
members@aol.com/ncmdr

Sexual Assault Resource Service: Sexual Assault Nurse Examiner-Sexual Assault Response Team
www.sane-sart.com

Further Reading:

Raquel Kennedy Bergen, Marital Rape: Understanding the Response of Survivors and Service Providers, SAGE Publications (1996).

D.E. Russell, Rape in Marriage, Indiana University Press (1990)

Jennifer A. Bennice and Patricia A. Resnik, Marital Rape: History, Research, and Practice (2003)

For specific questions and assistance in locating information and referrals, contact the Battered Women's Justice Project/Civil at 800-256-5883.

Endnotes

¹ Although we recognize that sexual violence crosses gender lines, for the purposes of this paper we are using language reflecting the prevalent scenario of the female as the victim/survivor. See Bureau of Justice Statistics—National Crime Victimization Survey: Criminal Victimization, 2004. "Females were most often victimized by someone they knew while males were equally likely to be victimized by a stranger or nonstranger...Of those offenders victimizing females, 21% were described as intimates and 34% as strangers. By contrast, of those offenders victimizing males, 4% were described as intimates and 34% as strangers."

² Hale, Matthew. History of the Pleas of the Crown. Vol. 1. (1680) (Emlyn, ed., 1847).

³ *Commonwealth v. Patrick Fogarty & others*, 74 Mass. 489 (Massachusetts 1857) (In *Fogarty*, the counsel cited 1 Hale P.C. 629. Archb. Crim. Pl. (Waterman's ed.) 306, note. 1 Russell on Crimes, 676, that a man cannot commit a rape on his own wife.).

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⁶ Finkelhor, David & Kersti Yllo. License to Rape: Sexual Abuse of Wives. New York: Free Press. (1985).

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⁸ Hasday, Jill Elaine. Contest and Consent: A Legal History of Marital Rape. 88 Calif. L. Rev. 1373. (2000).

⁹ Connerton, Kelly C. The Resurgence of the Marital Rape Exemption: The Victimization of Teens by Their Statutory Rapists. 61 Alb. L. Rev. 237. (1997).

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¹¹ American Prosecutors Research Institute, APRI. How is Spousal Rape Treated? (Chart) (2003).

¹² National Center for Victims of Crime. Spousal Rape Laws: 20 Years Later. Library: Issues: Spousal Rape. www.ncvc.org.

¹³ Pennsylvania 18 Pa.C.S. 3121 (2004).

¹⁴ Maine 17-A M.R.S. 251 (2005).

¹⁵ North Carolina Gen. Stat. 14-27.8.

¹⁶ D.C. Code 22-30918.

¹⁷ South Carolina Code Ann. 16-3-615 (2004).

- ¹⁸ South Carolina 16-3-615 (2004).
- ¹⁹ Connecticut Gen. Stat. 53a-70b (2004).
- ²⁰ Pennsylvania 18 Pa.C.S. 3121 (2004).
- ²¹ Tennessee Code 39-13-507 (2004).
- ²² SC Code Ann. 16-3-615 (2004); SC Code Ann. 16-3-658 (2004).
- ²³ CA Pen. Code 262 (2005).
- ²⁴ Ohio Code 2907.02 and 2907.03 (2005).
- ²⁵ WA RCW 9A.44.060 (2005).
- ²⁶ WA RCW 9A.44.100 (2005).
- ²⁷ MD Crim. Law Code Ann. 3-318 (2004).
- ²⁸ MS Code Ann. 97-3-99 (2005).
- ²⁹ California Penal Code 262 (2005).
- ³⁰ Connecticut Gen. Stat. 53a-70b (2004).
- ³¹ Virginia Code Ann. 18.2-67.2:1 (2004).
- ³² Idaho Code 18-6107 (2005).
- ³³ Yllo, Ph.D., Kersti. Marital Rape. Department of Sociology, Wheaton College. Norton, Massachusetts.
- ³⁴ Wellesley Centers for Women, Wellesley College. The Wife Rape Information Page: A FAQ and Resource Guide. (1998).
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